

Introduced by Senators Simitian and Correa

February 19, 2010

An act to add Section 7500.5 to the Government Code, relating to public retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

SB 1425, as introduced, Simitian. Public retirement: final compensation: computation: retirees.

The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS), which provides a defined benefit to its members based on age at retirement, service credit, and final compensation. PERL defines "final compensation" for purposes of calculating a member's retirement allowance. The State Teachers' Retirement Law and the retirement laws for county employees and city employees also provide for a defined benefit based on age at retirement, service credit, and final compensation.

This bill would provide, effective July 1, 2011, that any change in salary, compensation, or remuneration principally for the purpose of enhancing a member's benefits would not be included in the calculation of a member's final compensation for purposes of determining that member's defined benefit. The bill would require the board of each state and local public retirement system to establish, by regulation, accountability provisions that would include an ongoing audit process to ensure that a change in a member's salary, compensation, or remuneration is not made principally for the purpose of enhancing a member's retirement benefits. This bill would limit the calculation of a member's final compensation to an amount not to exceed the average increase in compensation received within the final compensation period and the 2 preceding years by employees in the same or a related group

as that member. This bill would also require a board of each state and local public retirement system to establish, by regulation, a requirement that a retired person may not perform services for any employer covered by a state or local retirement system until that person has been separated from service for a period of at least 6 months.

This bill includes Legislative findings expressing the public purpose that would be served by the enactment of this bill and expresses the Legislature's intent to enact legislation that would ensure that these provisions are implemented by all state and local public retirement systems.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares that:
2 (1) State and local public retirement boards have been authorized
3 under the law to administer retirement systems that provide
4 adequate, secure retirement benefits for beneficiaries who dedicate
5 their life's work to public service.
6 (2) Employees partner with their public agency employers to
7 fund this benefit.
8 (3) Any manipulation of those benefits creates harm for the
9 employees, beneficiaries, employers, and taxpayers and should
10 not be permitted.
11 (b) The Legislature further finds and declares that the efficacy
12 of the systems is threatened by the behavior of those who seek to
13 unfairly and unjustifiably enhance or "spike" their pensions.
14 (c) Neither the Legislature nor the courts ever anticipated a
15 circumstance where the application of the retirement law would
16 result in a method that permits inequitable application of
17 compensation rules in order to enhance an individual's retirement
18 allowance.
19 (d) It is the responsibility of the Legislature to provide guidance
20 to every retirement system so they can determine the proper
21 elements that go into calculating a member's retirement benefit as
22 recognized by the laws governing the retirement system.
23 (e) Retirement systems must employ sound principals that
24 provide consistent treatment of compensation throughout a

1 member's career and consistent treatment of compensation among
2 a class of employees.

3 (f) In order to provide consistent treatment across the systems,
4 the reporting system between the retirement system and each
5 participating employer must be sufficiently precise so as to enable
6 the retirement system to distinguish between items of remuneration
7 that are and are not properly included in a member's final
8 compensation.

9 SEC. 2. Section 7500.5 is added to the Government Code, to
10 read:

11 7500.5. (a) In order to safeguard the integrity and soundness
12 of all public retirement systems, assure prompt delivery of benefits
13 and related services to the participants and their beneficiaries, and
14 minimize employer expenses, all state and local public retirement
15 systems shall, at a minimum, administer their systems in
16 compliance with the provisions of this section. Nothing in this
17 section shall be construed to limit the Legislature's authority to
18 adopt more restrictive provisions applicable to a state or local
19 public retirement system.

20 (b) The board of each state and local public retirement system
21 shall establish, by regulation, accountability provisions applicable
22 to participating employers. Those accountability provisions shall
23 include an ongoing audit process to validate compliance with the
24 provisions of this section and penalty provisions for noncompliance
25 with the provisions of this section, including, but not limited to,
26 untimely or inaccurate submissions of any information the board
27 may require in the administration of the system.

28 (c) Any payrate, salary, special compensation, or other
29 remuneration determined by the board of a state or local public
30 retirement system to have been paid for the principal purpose of
31 enhancing a member's benefits under that system shall not be
32 included in any calculation of compensation earnable. Any
33 presumption by the board that salary or other remuneration was
34 paid for the principal purpose of enhancing a member's benefit
35 under the system may be rebutted by the member or by the
36 employer on behalf of the member. Upon receipt of sufficient
37 evidence to the contrary, a presumption by the board that salary
38 or other remuneration was paid for the principal purpose of
39 enhancing a member's benefits under that system may be reversed.

1 (d) Cash conversions of accrued employee benefits in amounts
2 that exceed the amount that is both earned and payable to the
3 member during a pay period shall not be credited to or included
4 in any calculation of compensation earnable by any state or local
5 public retirement system.

6 (e) Final settlement or termination pay or similar payment that
7 is received by a member in anticipation of retirement, upon
8 retirement, or separation from employment, shall not be credited
9 to or included in any calculation of compensation earnable by any
10 state or local public retirement system.

11 (f) A retired person, who has not reinstated following retirement,
12 whether or not he or she has attained the normal retirement age,
13 shall have a bona fide separation in service before performing
14 service for any employer covered by a state or local retirement
15 system as an employee, through a third party, or as an independent
16 contractor. A board of a state or local retirement system shall
17 establish, by regulation, the criteria under which a bona fide
18 separation is satisfied. A bona fide separation established by the
19 system shall not be less than six months.

20 (g) Compensation credited to, or included in, any calculation
21 of compensation earnable for an employee who is not in a group
22 or class shall not exceed, during the final compensation period as
23 well as two years immediately preceding the final compensation
24 period, the average increase in compensation earnable during the
25 same period for all employees of that same employer who are in
26 the closest related group or class.

27 (h) For the purposes of this section, the following definitions
28 shall apply:

29 (1) "A group or class of employees" means a number of
30 employees of the same employer considered together because they
31 share job similarities, work location, collective bargaining unit, or
32 other logical work grouping. Under no circumstance shall one
33 employee be considered a group or class.

34 (2) "Payrate or salary" means the normal monthly rate of pay
35 or monthly base pay of the member paid in cash and pursuant to
36 publicly available pay schedules to similarly situated members of
37 the same group or class of employment for services rendered on
38 a full-time basis during normal working hours.

39 (3) "Payrate or salary for a member who is not in a group or
40 class" means the monthly rate of pay or monthly base pay or salary

1 of the member, paid in cash and pursuant to publicly available pay
2 schedules, for services rendered on a full-time basis during normal
3 working hours, subject to the limitations of subdivision (g).

4 (4) “Special compensation” means a payment received for
5 special skills, knowledge, abilities, work assignment, workdays
6 or hours, or other work conditions.

7 (5) “Compensation earnable” means the salary or payrate,
8 special compensation, or other remuneration of the member used
9 in the determination of final compensation for the purposes of
10 calculation of a member’s retirement benefit.

11 SEC. 3. (a) It is the intent of the Legislature to enact changes
12 in the Education Code applicable to the State Teachers’ Retirement
13 System (Part 13 (commencing with Section 22000) of Title 1 of
14 the Education Code) to implement the provisions established in
15 Section 7500.5 of the Government Code.

16 (b) It is the intent of the Legislature to enact changes in the
17 Public Employee’s Retirement Law (Part 3 (commencing with
18 Section 20000) of Division 5 of Title 2 of the Government Code)
19 to implement the provisions established in Section 7500.5 of the
20 Government Code.

21 (c) It is the intent of the Legislature to enact changes in the
22 County Employees Retirement Law (Part 3 (commencing with
23 Section 31200) of Division 4 of Title 3 of the Government Code)
24 to implement the provisions established in Section 7500.5 of the
25 Government Code.

26 (d) It is the intent of the Legislature to enact changes to Chapter
27 2 (commencing with Section 45300) of Division 5 of Title 4 of
28 the Government Code, governing retirement plans established by
29 cities, to implement the provisions established in Section 7500.5
30 of the Government Code.

31 (e) It is the intent of the Legislature to enact changes to Chapter
32 4 (commencing with Section 50800) of Part 1 of Division 1 of
33 Title 5 of the Government Code, governing police officers’ pension
34 fund laws and firemen’s pension fund laws, to implement the
35 provisions established in Section 7500.5 of the Government Code.

36 SEC. 4. The provisions of this act shall be operative for all
37 active and future members of the applicable retirement systems
38 commencing on July 1, 2011.

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